IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 7037 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GESURI CHARTERING CO.LTD & 1 - Appellant(s)

Versus

NAHAR INTERNATIONAL LTD & 1 - Defendant(s)

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Appearance :

MS PAURAMI B SHETH for Appellant(s) : 1 - 2.

MR RJ OZA for Defendant(s) : 1,

RULE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 29/11/2005

ORAL JUDGMENT

1. This First Appeal arises out of judgment and decree rendered by the learned Civil Judge (Senior Division) at Gandhidham, Kachchh in Special Suit No.225 of 1995 on 28.09.1999, dismissing the suit of the plaintiff. The suit was for declaration and injunction, where following reliefs were sought:-

   (a) For a declaration that the Plaintiffs having exercised the lien under the provisions of the Major Port Trusts Act, Defendant No.2 is bound to retain the cargo and to sell the cargo in accordance with the provisions of the said Act and/or to preserve the Plaintiffs' rights in respect of the lien and/or the sale

proceeds thereof.

(b) For an injunction restraining the second Defendants, their agents and servants from giving delivery and/or permitting the first Defendants and/or their servants and/or agents and/or any party claiming through them to remove and take delivery of the cargo until the extinguishment of the Plaintiff's lien in accordance with law;

(c) For a mandatory injunction directing and ordering the second Defendants to sell the cargo as per the provisions of Section 61 of the Major Port Trusts Act, 1963 and to deposit the sale proceeds in Court and/or retain the amount in accordance with the provisions of the said Act;

(d) For interim and ad-interim orders pending the hearing and final disposal of the suit in terms of prayers (b) and © above;

(e) Costs of the suit be provided for;

(f) For such other and further reliefs as in the nature and circumstances of the case this Honourable Court may deem fit and proper.

2. The said suit for the purpose of Court fees and jurisdiction was valued in the plaint, in Para-17, as under:-

> " That the subject matter of the suit is not susceptible to any monetary valuation and as such, fixed Court fee stamp of Rs.60/- is paid on the plaint as required under item 23(f) of the Scheduled II of Bombay Court Fees Act. That the suit is claim is more than Rs.20,000/- and as such, the Honourable Court has jurisdiction to try the same."

3. This appeal came to be admitted and respondents being served with the notice of admission, preferred Civil Application

No.14656 of 1999 seeking following reliefs:-

(a) Your Lordships be pleased to allow this application and be pleased to recall the order passed on 3-11-99 admitting the Civil First Appeal No.7037/99 and be pleased to dismiss the Appeal as being not maintainable before this Hon'ble Court;

(b) Pending the admission, hearing and final disposal of this application, Your Lordships be pleased to stay all miscellaneous and ancillary proceedings of Civil First Appeal No.7037/99 until the present application is finally decided by this Hon'ble Court;

and

(c) Your Lordships be pleased to grant such other and further relief as deemed just and proper in the facts and circumstances of the case.

3.1 The said Civil Application came to be disposed of by an order dated December 30, 1989 by observing that question regarding maintainability of appeal is required to be decided before the appeal is heard on merits, and therefore, the said application came to be disposed of by holding that it would be open for the applicant respondent, to raise the contention regarding maintainability of the appeal, before the appeal is heard on merits.

4. Therefore Civil Application Nos.5923 of 2001 and 583 of 2002, have been filed and for deciding this Civil Application, it would be necessary for the Court to examine the question of jurisdiction, which has been left open to be decided while deciding Civil Application No.14656 of 1999.

5. The question, therefore, that arises for determination by this Court, is whether this appeal is maintainable before this Court or

would be maintainable before District Court?

6. Learned Advocate, Mr.Oza, for the respondent submitted that his question is squarely covered by a number of decisions rendered by Division Benches of this Court, as well as, by Learned Single Judges of this Court, and consistently a view has been taken that where the suit is valued by the plaintiff for the purpose of Court Fees, the value for the purpose of jurisdiction would be the same in light of provisions contained in Section 8 of the Suit Valuation Act, 1887. In support of his contentions, he has relied upon following judgments.

(i) **AIR 1975 Gujarat 81**, in case of **Nazarali Kazamali** and others Vs. **Fazlanbibi** and others

(ii) Unreported judgment dated **21st July, 1969** rendered by the Hon'ble High Court **(Coram: A.D.Desaid & Thakkar, JJ.)** in **Appeal No. 218 of 1961**.

(iii) **1987 (I) G.L.H. (U.J.) 21**, in the case of **Filoma Pathubhai Patel** and others Vs. **Ambalal D. Bhagat** and others.

(iv) **1995 (2) GCD (Guj) (UJ)**, in case of **Principal, Arts & Science College, Dabhoi Town, Dist.Vadodara** Vs. **Sunil Kumar Vipinchandra Shah**

(v) Unreported judgment dated **August 30th, 2002** rendered by this Court **(Coram:K.M.Mehta,J.)** in **First Appeal No.898 of 2002**.

(vi) **2004 (1) GLR 179**, in the case of **Maliben Kamabhai Harijan** Vs. **Jagjivan Nanji (Decd.) Through Lrs**.

6.1 Learned Advocate, Mr.Oza, also relied upon the decision of Bombay High Court in case of **Ahmedbhai Kadubhai Vs. Bahruddin reported at VoL.48 BLR 110** and **1949 BLR 545, in case of Bansilal Lalchand Firodia Vs. Bhikubai**

6.2 Learned Advocate, Mr. Oza, submitted that the view has been consistently taken by the Courts that where the suit is valued differently for the purpose of Court Fees and jurisdiction, the valuation made by the plaintiff for the purpose of Court Fees would govern the question of jurisdiction and the forum where the appeal would lie, and, therefore, this appeal would not be maintainable before this Court.

6.3 Learned Senior Advocate, Mr.Thakore, appearing with Ms. Pauromi Sheth for the appellant, submitted that the decisions relied upon by learned Advocate Mr.Oza would not help the case of the respondent on maintainability of their appeal. According to Mr.Thakore, the Division Benches of this Court, while rendering the decisions, have not referred to binding

decisions of Bombay High Court viz. the decision in case of Bansilal Lalchand (Supra). Mr. Thakore has taken this court to the said judgment in support of his contention that there can be separate valuations for the purpose of jurisdiction, as well as, Court fees and once a separate value is shown, the same should govern the question of jurisdiction and not the Court fees. Mr.Thakore, submitted that, therefore, the appeal would be maintainable before this Court.

6.4 It is indicated that there is an amendment in the Suit Valuation Act, so far it relates to the State of Gujarat by Gujarat Act No.31 of 1964 and Section 8 of the Principal Act viz. the Suit Valuation Act, 1887 stands amended where it is provided that the words, figures, brackets and letters, in Section 8 would be read as

under:-

" clause (d) of paragraph (iv), paragraphs(v), (vi),(vii) and (x) and clause (d) of paragraph (xi) in section 6 of the Bombay Court-fees Act, 1959, court-fees are payable ***ad valorem*** under the Bombay Court-fees Act, 1959"

6.5 Mr.Thakore has drawn attention to Para-17 of the plaint to indicate that the plaintiff has valued the suit for the purpose of Court Fees under item 23 (f) Scheduled II of the Bombay Court Fees and has fixed the Court fees Stamp at Rs.60/- but for the purpose of jurisdiction, the suit claim is valued at more than Rs.20,000/-.

6.6 He has also drawn attention of this Court to earlier part of the claim where it is indicated in Para-4 that their demurrage claim payable to the plaintiff is upto 14th January, 1993 is valued at

US$505, 286.55, payable by defendant no.1, and therefore, the value of the subject matter of the suit has to be considered at US$ 505,286.55.

6.7 Mr. Thakore, therefore, submitted that the preliminary objections of maintainability of the appeal, may be turned down.

7. In rejoinder to what is contended by learned Senior Advocate, Mr.Thakore, learned Advocate Mr.Oza drawn attention of this Court to unreported judgment in Appeal No.218/1961 rendered by Division Bench of this Court on 21st July, 1969 to indicate that the said Division Bench has taken into consideration the decision in the case of Bansilal Lalchand (Supra) which according to Mr.Thakore, has not been referred to by Division Bench of this Court. Mr.Oza has also drawn attention of this Court to the decision in case of

Nazarali Kazamali (Supra) where, the amended provisions of the Suit Valuation Act, 1887 by virtue of Gujarat Act 31 of 1964 was taken into consideration by a Division Bench of this Court and a view has been taken against maintainability of present appeal.

8. Having regard to the rival side contentions, the question, that arises for determination by this Court, would be whether this appeal would be maintainable before this Court in view of various judicial pronouncements.

9. In order that the said question can be properly addressed, it would be proper to firstly examine the plaint because it is the plaintiff who approaches the Court and it is his assessment of his claim. In this context, if the plaint is examined, although the plaintiff in para-4 of the plaint states that outstanding amount receivable by him is to the tune of US $ 5,05,286.55, he has averred

in Para-17 of the plaint that the subject matter of suit is not susceptible to any monetary valuation. In this regard, the prayers made in the plaint also would be relevant where only declaration and injunction is sought in support of lien claimed in the plaint. The plaintiff has stated that the subject matter in the suit is not susceptible to monetary valuation is also not supported by affirmation in Para-4 when it is said that the amount receivable is US $ 5,05,286.55, therefore, even according to the plaintiff, the subject matter is not the amount, but the subject matter is the right of lien. The amount would be variable or could vary, and therefore, apart from the question whether there can be two distinct valuations of suit, one for the purpose of court fees, other for the purpose of jurisdiction, even on plain reading of the plaint, it is clear that even the plaintiff

contemplates that the subject matter of suit is not susceptible to monetary valuation, although, he is aware and assert that the amount involved is 5,05,286.55 US $.

9.1 It would also be relevant to note that even according to the plaint, the claim for the said amount, is not the subject matter of the suit because for that amount, the plaintiff has already invoked Clause 42 of the Charterparty and referred the dispute to arbitration in London as averred in Para-5 of the plaint, therefore, even while accepting the contentions raised on behalf of the appellant-plaintiff, the appeal would not be maintainable before this Court.

9.2 Now, that the contentions raised on question of maintainability in light of various pronouncements and Section 8 of the Suit Valuation Act as well as the Bombay

Civil Courts Act (Now Gujarat Civil Courts Act, 2005) it has to be noticed that a Division Bench of this Court has in a recent pronouncement in case of Maliben (Supra), taken a view that in light of provisions contained in Section 8 of the Suit Valuation Act, the valuation fixed by the plaintiff, for the purpose of Court fees, would govern the valuation for the purpose of jurisdiction. In that case also, the suit was for declaration injunction with regard to the amount and the plaintiff valued the Court fees under Section 6(iv) (j) of the Bombay Court Fees Act and affixed Court fees Stamp of Rs.30/-.

9.3 It was held that appeal from decree in such a suit would lie to District Court and the appeal filed in the High Court was held to be incompetent. In the instant case also, similar situation exists. The suit is valued under item 23 (f) Scheduled II of

the Bombay Court Fees Act and Court Fee Stamp of Rs.60/- was affixed, and therefore, this appeal would be not maintainable before this Court. There are earlier judgments of this Court as pointed out by learned Advocate Mr.Oza which this Court has reported in earlier part of the judgment.

9.4 A contention was raised by learned Senior Advocate Mr.Thakore to the effect that earlier binding judgment of Bombay High Court has not been referred to in earlier judgments of this Court. In this context, he made a reference to the Bombay High Court judgment in case of Bansilal Lalchand (Supra). However, it appears that the said judgment has been examined by Division Bench of this Court in Appeal No.218 of 1961, as can be seen from unreported judgment, where in Para-3 of the

judgment, reference is made to the said judgment and after referring to the said judgment, a view was taken that in such eventuality the appeal would lie before District Court and not High Court. Again in case of Maliben (Supra), Division Bench of this Court has considered this very judgment and has taken a view that in such eventuality the appeal would be maintainable before District Court and not the High Court.

9.5 The other contention of Mr.Thakore was that there is an amendment in Section 8 of the Suit Valuation Act, brought in by Act 31 Gujarat Act, 1964 which according to Mr.Thakore, would applicable only where the Court fees is payable ad valorem under the Bombay Court Fees Act, 1959, and not in other situation. According to Mr.Thakore, in the case on hand and similar cases , the Court fee would be not ad valorem and fixed

the court fees, and, therefore, the case would not be governed by Section 8 of the Suit Valuation Act. This question came to be examined by Division Bench of this Court in case of Nazarali Kazamali (Supra) and it has been held that valuation of a suit for the purpose of Court fees determines the jurisdictional value, so also the forum of appeal, and, therefore, the contentions raised by learned Senior Advocate Mr.Thakore cannot be accepted.

10. The resultant effect of the foregoing discussion is that, this court has before it two Division Bench decisions where a view is taken that in suit for declaration injunction on fixed court fees stamp, appeal would lie to the District Court and not to the High Court in light of the provisions contained in Section 8 of the Suit Valuation Act, Bombay

Court Fees Act and Bombay Civil Courts Act (Now Gujarat Civil Courts Act).

10.1 This court has before it a decision of Division Bench wherein, it has been held that in light of provisions contained in Section 8 of Suit Valuation Act as amended by Gujarat Act, 31 of 1964, the valuation of suit for the purpose of Court fees determines the jurisdictional value and the forum of appeal.

11. While considering these questions earlier series of judgments have been taken into consideration including the judgments relied upon by learned Senior Advocate Mr.Thakore.

12. This appeal, therefore, would not be maintainable before this Court. The memo of appeal alongwith annexures and Civil

Applications, therefore, is/are, directed to be returned to the appellant for presentation to the proper Court. No order as to costs.

(A.L.DAVE, J.)

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